

STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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SONNY PERDUE
GOVERNOR

ROB BRASWELL
COMMISSIONER

SPECIAL EDITION
IMPORTANT NOTICE
ADOPTED RULEMAKING

December 15, 2008

DEPARTMENT OF BANKING AND FINANCE

FINAL REGULATIONS

Adopted December 15, 2008

To all interested persons:

Notice is hereby given that pursuant to the authority granted to it in the Georgia Administrative Procedures Act, Official Code of Georgia Annotated (O.C.G.A.) Chapter 50-13 and by authority of O.C.G.A. § 7-1-61, O.C.G.A. § 7-1-663; O.C.G.A. § 7-1-1012, and other cited statutes, the following attached Rules of the Department of Banking and Finance have been finally adopted on December 15, 2008. They were filed with the Secretary of State on December 15, 2008, and will be effective 20 days following or January 5, 2009.

Summary:

The attached rules were proposed and distributed on November 14, 2008. We received four written comment letters. No changes to the Proposed Rules were made. The Department believes these Final Rules encourage safety and soundness, safe and fair mortgage lending, and conform to the law. This set of rules is your copy of the Final Rules.

80-5-1-.02 License, Registration and Supervision Fees for Check Cashers and Sellers, Money Transmitters, Representative Offices and Mortgage Lenders and Brokers; Due Dates.

In order to accommodate participation in the Nationwide Mortgage Licensing System, changes have been added to this Rule which will limit an application and license fee for mortgage lenders and brokers to cover the main office; each branch office will be assessed a fee; and date changes have been made for renewal applications and license and registration fees which now must be received before December 1 of each year instead of April 1.

80-5-1-.07 License Renewal Periods and Requirements for Mortgage Brokers and Lenders.

This Rule has been added to facilitate the transition of mortgage brokers and mortgage lenders to the Nationwide Mortgage Licensing System (NMLS) and the conversion from a fiscal year licensing period to a calendar year licensing period. All licensees and registrants will be required to set up an account on NMLS as referenced in this Rule. There will be a transitional six-month licensing period to complete the conversion from the current renewal due date of April 1 to a December 1 renewal due date. After the conversion year period, all licenses and registrations will expire on December 31 of each year.

80-11-4-.01 Initial Experience and Education Requirements; Continuing Education.

A change has been made to this Rule reflecting the due date for continuing education hours consistent with a calendar year licensing period.

80-11-4-.06 Wholly Owned Subsidiaries of Lenders; Notification Statement; When Registration Required.

A change to this Rule has been made reflecting the due date for registration consistent with a calendar year registration period.

ADOPTED RULES

80-5-1-.02 License, Registration and Supervision Fees for Check Cashers and Sellers, Money Transmitters, Representative Offices and Mortgage Lenders and Brokers; Due Dates.

(1) Check sellers and money transmitters.

(a) The annual license fee is two thousand dollars (\$2,000).

(b) The annual renewal license fee is two thousand dollars (\$2,000) for check sellers and one thousand dollars (\$1,000) for money transmitters and shall be due and must be received by the Department on or before the first day of November of each year. Where the person or corporation engages in both the sale of checks and money transmission, the higher of the two fees shall be due and payable. Annual license renewal fees not received prior to November 1 will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of issuance or renewal prior to January 1.

(c) An additional non-refundable application investigation fee of two hundred fifty dollars (\$250) will be assessed.

(d) All check seller and money transmitter licenses shall expire on December 31 of each year.

(2) Check Cashers.

(a) The annual license fee is five hundred dollars (\$500).

(b) The annual renewal license fee is five hundred dollars (\$500).

(c) An initial investigation and supervision fee shall be seven hundred fifty dollars (\$750) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first license period.

(d) Initial and renewal license fees shall also include an additional fifty dollars (\$50) for the second and each additional location, plus a thirty dollars (\$30) processing fee for each set of fingerprint cards required to be submitted with the application.

(e) Annual renewal license fees shall be due and must be received by the Department on or before the first day of August of each year. Annual renewal license fees not received prior to the first day of August of each year will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of renewal prior to October 1. Applicants may not operate a check cashing business without a current license.

(f) Check cashers desiring exemption pursuant to Rule 80-3-1-.02(4)(b) and designated as Registrants shall file an initial application and pay a registration fee of two hundred dollars (\$200) and an annual renewal application and fee of one hundred dollars (\$100) due and must be received by the Department on or before the first day of August of each year. Annual renewal fees not received prior to the first day of August of each year will be assessed a late fee of one hundred dollars (\$100) and cannot be assured of renewal prior to October 1.

(g) An initial investigation and supervision fee shall be three hundred dollars (\$300) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first registration period.

(h) All check cashers licenses and registrants shall expire on September 30 of each year.

(3) Registrants of representative offices, trust production offices, business production offices, and loan production offices shall file a registration statement, as prescribed by the Department, and shall pay a registration fee of one hundred fifty dollars (\$150) on or before the first day of January of each year. Such fee is intended to cover the costs of responding to questions or complaints from consumers with regard to these entities doing business in Georgia and is in lieu of registration under O.C.G.A. §16-14-15, as provided in O.C.G.A. §7-1-11. Registrants of international bank representative offices shall pay a registration fee of one thousand dollars (\$1,000). Each bank holding company supervised by or registered with the Department shall pay on or before January 31 of each year an annual registration fee of one thousand dollars (\$1,000). Each Georgia bank holding company or holding company that owns a Georgia bank must pay five hundred dollars (\$500) for each additional Georgia subsidiary corporation in those categories, provided, however, any registrant required to register and pay a fee by another paragraph of this chapter shall only be required to pay one fee which shall be the higher fee.

(4) Mortgage lenders and brokers, licensees and registrants.

(a) Lenders. The annual and renewal application and license fee for mortgage lenders shall be one thousand dollars (\$1,000). The initial one thousand dollars (\$1,000) fee covers the main office. Any branch offices included in the initial application shall be assessed a fee of three hundred fifty dollars (\$350) each. A fee of three hundred fifty dollars (\$350) will be assessed for each additional office not initially registered, if such office is located in Georgia, and if mortgage lending activity is conducted at the office. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees must be received before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee not received by the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct a mortgage business without a current license or registration.

(b) Brokers. The annual and renewal application and license fee for mortgage brokers shall be five hundred dollars (\$500) which covers the main office. Any branch offices included in the initial application shall be assessed a fee of three hundred fifty (\$350) each. A fee of three hundred fifty dollars (\$350) will be assessed for each additional office not initially registered, located in Georgia at which mortgage brokering activity is conducted. Brokers include loan processors. Processors are defined in Rule 80-11-4-.07. Such a processor may have a separate main office and other branch offices where mortgage loan processing is done. The offices will be treated the same as brokers' offices. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees must be received before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee not received by the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct a mortgage business without a current license or registration.

(c) Lender Registrants. The annual and renewal application and registration fee for mortgage lenders required to register but not be licensed with the Department shall be one thousand dollars (\$1,000), due on or before the first day of December of each year. Subsequent renewal applications and registration fees must be received before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received by the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct a mortgage business without a current license or registration.

(d) Broker Registrants. The annual and renewal application and registration fee for mortgage brokers required to register but not be licensed with the Department shall be five hundred dollars (\$500), due on or before the first day of December of each year. Subsequent renewal applications and registration fees must be received before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received by the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct a mortgage business without a current license or registration.

(e) All license, investigation, registration, supervision and late fees must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, reapplication for a license or registration or any other approval from the Department.

(f) All late fees collected by the Department, net of the cost of recovery, which cost shall include any cost of hearing and discovery in preparation for hearing, shall be paid into the state treasury to the credit of the general fund or may be paid as provided in O.C.G.A. §7-1-1018(d).

(g) Applicants for approval to acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of the ownership of any other entity licensed to conduct business as a mortgage lender and/or a mortgage broker under O.C.G.A. Article 13 (otherwise called change of control) shall pay a nonrefundable investigation, application and processing fee of five hundred dollars (\$500).

(h) Application for an additional office of a licensee shall be accompanied by a nonrefundable fee of three hundred fifty dollar (\$350), as provided in O.C.G.A. §7-1-1006.

(i) No fee is assessed for a wholly owned subsidiary of a lender who files and keeps current a proper notification statement.

(j) The fee for initial application for approval by the Department for a school or education provider shall be five hundred dollars (\$500). An application for approval will be on a form provided by the Department at its website. The fee is nonrefundable. The fee for annual renewal of such approval is two hundred fifty dollars (\$250).

(k) The fee for name permission application investigations shall be one hundred fifty dollars (\$150). The fee is non-refundable.

(5) The Department may discount or surcharge all supervision or license fees herein provided to assure funding of annual appropriations by the General Assembly.

Authority Ga. L. 1974, pp. 705, 732, 733, 921; Ga. L. 1976, Act 762, p. 168; 1990, p. 739; 1993, p. 543; O.C.G.A. §7-1-41; §7-1-61; §7-1-685; O.C.G.A. §7-1-701; O.C.G.A. §7-1-703; O.C.G.A. §7-1-716; O.C.G.A. §7-1-721.

80-5-1-.07 License Renewal Periods and Requirements for Mortgage Brokers and Lenders.

(a) For purposes of this Article the Nationwide Mortgage Licensing System (NMLS) is defined as a uniform multi-state administration of an automated licensing system for mortgage brokers and mortgage lenders. The department's participation in the NMLS is authorized by O.C.G.A. §7-1-1003.5.

(b) To facilitate the initial transition of mortgage brokers and mortgage lenders to the NMLS system, a conversion from a fiscal year licensing period to a calendar year licensing period will begin in January 2009. All licensees and registrants will be required to transition onto the system by setting up their accounts on the NMLS. The transition period will be in effect for the six-month period of January 2, 2009 to June 30, 2009, and must coincide with a renewal application made simultaneously with the Department for the six-month conversion licensing period of July 1, 2009 to December 31, 2009.

(c) Renewal applications for licenses and registrations for the conversion licensing period of July, 1, 2009 to December 31, 2009, must be submitted by the current renewal due date of April 1, 2009, at which time a prorated renewal fee and a one time NMLS account set up fee will be assessed to cover the cost of licensing or registration for the conversion licensing period. At the conclusion of the six-month conversion licensing period all mortgage licensees and registrants properly registered with NMLS and approved by the Department will hold licenses and registrations that will expire as noted in paragraph (e) of this section. All fees are non-refundable.

(d) Beginning January 2, 2009, all applications for new licenses or registrations must be made through NMLS. Fees for new applications include an initial Department investigation fee and the appropriate application fee for the application type. After January 2, 2009, applications for new licenses and registrations which are approved between November 1 and December 31 in any year will not be required to file a renewal application for the next calendar year. All fees are non-refundable.

(e) After the conversion year period, all licenses and registrations issued pursuant to the Act shall expire on December 31 of each year, and application for renewal shall be made annually between November 1 and December 31 each year. Subsequent renewal applications and/or license fees must be received by December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and/or license fee not received by the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Any license or registration which is not renewed by December 31 will require the applicant to file a reinstatement application in order to conduct mortgage business in the State after that date.

Authority O.C.G.A. §7-1-1003.5

80-11-4-.01 Initial Experience and Education Requirements; Continuing Education.

(1) Subject to the exceptions below, any mortgage broker license issued, reinstated or renewed after July 1, 2000 to an applicant, shall be subject to the requirements for experience or education. Such requirements shall apply to natural person applicants, or if to other entities or persons, to the operating manager who administers the operations in this state (collectively, "applicant").

(2) Applicants for a new license or for reinstatement of a previous license shall elect and meet either the experience or the education requirements before a license will be issued or reinstated.

(3) Exception for certain licensees for initial education or experience requirements.

(a) Any mortgage broker license issued to an applicant prior to July 1, 2000, which license remains continuously valid without interruption until renewed on July 1, 2001, shall be subject to either one year of verifiable experience or applicant must meet the education requirements in this rule.

(b) Applicants for renewal eligible for this exception, in the case of a natural person, need only state on the application that the license was issued on or before July 1, 2000 and has remained continuously valid without interruption since July 1, 2000. In the case of other entities or persons, applicant must demonstrate that the current operating manager has completed either one year of experience, verified according to this rule, or the education requirements.

(4) Experience Requirements:

(a) Applicant must complete two (2) years of verifiable experience working full time for a licensed mortgage broker or lender.

(b) Experience shall consist of directly soliciting, processing, placing and negotiating mortgage loans for others.

(c) The following information must be submitted at the time of application or renewal by an applicant who wishes to qualify by using experience:

1. Letter on letterhead from previous or current employer certifying completion of two (2) years work experience directly soliciting, processing, placing, and negotiating mortgage loans for others. Telephone number of employer must be provided;

2. Copy of IRS form W-2 for the tax years covering the experience requirement;

3. Completed and signed IRS form 4506 which enables the Department to verify the W-2, and;

4. Other documents or information required by the Department necessary to verify completion of the experience requirement. Experience requirement may be verified by the Department directly with the employer and tax authorities.

(d) If applicant's experience is received from an employer not required to be a Georgia Residential Mortgage Act licensee, such applicant must also complete four (4) hours of education provided by an approved school in Georgia, which education specifically covers the Georgia Residential Mortgage Act and rules and regulations of the Department.

(5) Initial Education Requirements:

(a) Applicant must complete a minimum of forty (40) course hours of prescribed courses from a Department approved provider of mortgage training courses. Courses will deal with obtaining a basic understanding of technical mortgage terms, elements of the mortgage brokering process, federal law, applications and required documentation, and shall include a minimum of four (4) course hours on Georgia law, rules and regulations. At least one of the remaining thirty (36) hours shall be focused on fraud detection and prevention in the mortgage industry.

(b) Applicant must submit proof of completion of the required education courses in the form of a certificate of completion issued by a Department approved provider of mortgage education courses. This requirement may be verified by the Department directly with the provider. The Department will make a list of such providers available on its website.

(6) Experience requirements must have been completed within the three (3) calendar year period immediately prior to the date of approval of the license. Initial education requirements must have been completed within the one (1) calendar year period prior to the date of approval.

(7) Continuing Education. Applicants for renewal of a broker's license shall meet the following continuing education requirements.

(a) Applicant must complete on an annual basis and by October 31 each year a minimum of twelve (12) hours of continuing education dealing with elements of the mortgage brokering process, federal law, federal rules and regulations, Georgia law, Georgia rules and regulations, applications and required documentation, fraud, ethics or other topics pertinent to the operation of a mortgage brokering business in Georgia. At least one (1) hour shall be concentrated on fraud detection and prevention.

(b) Except as provided in this rule, continuing education must be completed with a Department approved provider of mortgage education classes.

(c) Seminars, courses or classes sponsored and approved by mortgage-related state and federal regulatory agencies, the National Association of Mortgage Brokers (NAMB), state and federal regulated lenders and their affiliates or professional associations, all of which must be recognized by the Department as proper providers of education requirements (“approved providers”). Requirements may be satisfied at monthly association meetings, conventions, seminars or through electronic means provided the subject meets the requirements of this Rule. For purposes of continuing education, instructors and speakers at seminars, conventions or classes sponsored by approved providers will not be required to seek Department approval as approved providers of mortgage education classes. Education providers shall assign a certificate number to each attendee of a seminar, course or class. In state providers must keep lists of attendees for at least two (2) years.

(d) Each licensed broker must maintain a listing of the courses completed or seminars attended, the date attended, the name of the instructor or speaker, the name of the sponsoring association, the course agenda and the credit hours earned for each course or seminar. Credit hours may not be earned or approved in less than one (1) hour increments. Such information may be requested as part of the renewal application.

(e) The Department will not be required to verify that each applicant has completed the required Department continuing education hours prior to issuance of a renewal license. However, the Department may at any time and at its discretion select any number of renewal applications to verify that the continuing education requirements have been met. Verification of continuing education hours may be performed as a part of the examination process. Licensees must maintain documentation for five (5) years that verifies the continuing education hours attained. The Department may request proof of attendance or verification from the applicant, sponsor, instructor or speaker.

(f) The Department may at its discretion accept continuing education hours completed between October 31 and December 31 of each year as part of the license renewal requirement. However, licensees/applicants that fail to attain at least 12 continuing education hours by October 31 of each year will be subject to a one thousand dollars (\$1,000) fine.

(g) Upon submitting an application to renew a license, failure to complete twelve (12) continuing education hours by October 31 together with failure to complete the hours by December 31 with payment of the one thousand dollars (\$1,000) fine shall result in inability to renew the license, or other administrative action.

(h) For purposes of continuing education requirements “applicant” shall mean an individual owner of the licensee, or a person designated and employed by the licensee as the primary supervisor or manager of the licensee’s mortgage business. The intent of the rule is that the continuing education must be obtained by a person who directs the affairs of the mortgage business.

(i) Newly licensed brokers who obtain their license between January 1 and October 31 of any year will be required to have twelve (12) hours of continuing education credits in order to qualify to renew their license for the next license renewal period. Newly licensed brokers who obtain their license between November 1 and December 31 of any year will be required to complete continuing education credits prior to license renewal. Provisions in subsection (f) and (g) of this rule also apply to such newly licensed brokers.

Authority O.C.G.A. § 7-1-1012; § 7-1-1004.

80-11-4-.06 Wholly Owned Subsidiaries of Lenders; Notification Statement; When Registration Required.

(1) A wholly owned subsidiary of a lender that is a federally insured financial institution (no common stock or voting stock owned by other than a financial institution) is exempt from licensing under the Georgia Residential Mortgage Act, provided it keeps a current notification statement on file with the department.

(2) A notification statement shall be updated by the entity should any information on the most recently submitted notification statement change. Updated notification statements shall be submitted to the department by December 1 of each year. No fee is applicable.

(3) Should the information on the statement be incorrect and should the department discover that Georgia consumers cannot reach a representative or their complaints are not being resolved promptly and fairly, the subsidiary will be notified of their loss of exempt status and their subsequent classification as a registrant, subject to all of the applicable requirements, fees and fines.

Authority O.C.G.A. § 7-1-1012; § 7-1-1001; § 7-1-1003.4.